



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Regional Office

545 Marriott Drive, Suite 700

Nashville, Tennessee 37214

JAN 23 2024

Dear Tribal Leader:

We are pleased to announce the Office of Trust Services (OTS) is now accepting tribal requests for FY 2024 appropriation for Attorney Fees and Litigation Support. Enclosed is a copy of the memorandum dated January 19, 2024, from the Director, Bureau of Indian Affairs.

The enclosed memorandum provides the minimum guidelines and the type of information to be included in your request for FY 2024 funds. Please note the due date for the Eastern Regional Office to submit the Tribal request is March 15, 2024; therefore, please submit your request by **Friday, February 16, 2024, to the Eastern Regional Office**. This will allow time for the review by the Regional Office and the Solicitor's Office review.

Please keep in mind that all requests for Attorney Fees or Litigation Support must include the required information, as stated in the enclosed memorandum.

Once your request for attorney fees and/or litigation support is completed, please forward your request for funds to the Bureau of Indian Affairs, Eastern Regional Office, Attention: Ms. Rebecca J. Smith, Tribal Operations Specialist, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

All requests that are received by the due date Friday, February 16, 2024, will be reviewed for completeness and then forwarded to the Attorney Fee Review Committee for final determination on awarding Attorney Fees and Litigation Support Services. These funds are competitive funds and not all applications are awarded funding.

If you have any questions, please contact Ms. Smith, at 615-564-6711 or 615-289-7906.

Sincerely,

Kimberly A. Bouchard
Regional Director

Enclosure



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

January 19, 2024

Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs

Subject: Fiscal Year (FY) 2024 Requests for Attorney Fees and Litigation Support Services

The Office of Trust Services (OTS) is now accepting tribal requests for funding from the FY 2024 appropriations for the attorney fees and litigation support services program. The cut-off date for Regional Offices submitting tribal requests along with complete package per instructions below are to be submitted to the Central Office no later than March 15, 2024. The original proposal as well as an electronic file on a separate thumb drive are to be submitted for the ranking team review, along with a memorandum from the Regional Director to the Director, BIA, stating their endorsement of the proposals submitted for their Region. An email submittal of the proposal package will not be accepted.

Attorney Fees:

Attorney Fee funds are for legal fees (not expenses) of private legal counsel to be retained by the tribes to represent litigation, negotiations, or administrative proceedings that involve the protection of tribal trust resources or tribal rights. In general, it is the policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. The regulations at 25 CFR 89.40, however, provide that there are exceptions to this general policy.

Requests should identify the applicable exception(s) and describe how the request meets each exception. To qualify for funding, one of the exceptions listed in 25 CFR 89.41 must be fully met. Approved funding for this program has been set at a rate not to exceed \$200.00 per hour. Each request will include the following:

- (1) Historical and other relevant information regarding events leading to the current situation.
- (2) A concise description of the issue, scope of work for which attorney fee funds are requested, including approximate court dates, time frames for negotiations, litigation, etc.
- (3) A detailed breakdown of the services, costs of the services, number of attorney hours and hourly rates. Requests should also include a tribal resolution, copies of the applicable legal counsel contracts, and a current comprehensive financial income statement. The financial statement should contain sufficient information for a determination to be made whether tribe can afford to pay for all or a portion of the legal services.
- (4) A Regional Solicitor Opinion of the Tribes Request.

- (5) Tribes requesting attorney fees must provide a certificate or statement from their attorney's bar association indicating that the attorney is a member in good standing.
- (6) A memorandum from the Regional Director endorsing the Tribes request for Attorney Fees/ Litigation Support funding.

Agency and regional office program staff are required to review the attorney fee requests and provide recommendations and pertinent information that will assist the Attorney Fee Review Committee in determining a reasonable amount of funding for the tribe.

If concerns are raised by the Regional Solicitor about information or lack of information in the request, please address those concerns before forwarding the application to the Central Office.

Litigation Support:

Litigation Support funds are available for tribes who are involved in litigation, negotiation or administrative proceedings to protect tribal trust resources or tribal rights (except for tribal water rights) and need funds to cover costs associated with developing evidence, for research services, or to procure the services of expert witnesses to support the tribe's position. Approved funding for this program has been set at a rate not to exceed \$200.00 per hour. (Funds for water rights issues are available from the BIA Water Rights Negotiation/Litigation Program.)

Requests will include the following:

- (1) Historical or general background information that describe the events leading to the current situation for which funds are requested.
- (2) A detailed breakdown of the services, costs of the services, number of hours and hourly rates.
- (3) A tribal resolution.
- (4) A memorandum from the Regional Director endorsing the Tribe's request for litigation support funding.

Agency and Regional office program staff will review the litigation support requests and provide relevant information and recommendations for use in the decision-making process. The Field Solicitor should be consulted if there is doubt whether litigation support funds should be used to support a specific matter.

Attached please see Attorney Fee/Litigation Support application requirements to aid regional coordinators in requesting proposals from the Tribes, as well as check list once proposals have been received by the regions for submittal to Central office.

The proposal package along with a copy of the Regional Director's Memorandum of endorsement for Tribal Proposal should be sent to:

Chief, BIA Branch of Water Resources
13922 Denver West Parkway, Suite 300
Lakewood, CO 80401

The Original Memorandum addressed to the Director; Bureau of Indian Affairs, is to be sent to the following:

Director, Bureau of Indian Affairs
Department of the Interior
1849 C St., NW, MS 4606-MIB
Washington, DC 20240

Questions concerning the Attorney Fees or Litigation Support Services program should be directed to Jeff Good, Chief, Division of Water & Power, at (720) 708-7461 or Christina Mokhtarzadeh, Chief, Branch of Water Resources, at (202) 374-5532 or Brenda Hatathlie, Civil Engineer, Branch of Water Resources, at (202) 815 -6534.

Attachments

cc: Attorney-Advisor, Office of the Solicitor, Division of Indian Affairs, Branch of
Environment
and Lands
Senior Counselor Office of Assistant Secretary Indian Affairs



Attachment 1

APPLICATION FOR ATTORNEYS FEES AND LITIGATION SUPPORT FUNDS UNDER 25 CFR PART 89

It is the general policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. However, pursuant to 25 C.F.R. Part 89, the Assistant Secretary – Indian Affairs may authorize the expenditure of appropriated funds to pay reasonable attorney's fees to allow an eligible Indian tribe to secure private legal representation under certain circumstances.

Attorney fee funds may only be used to pay for legal fees (not expenses) of private legal counsel hired by tribes to represent the tribe in litigation, negotiations, or administrative proceedings that involve the protection of tribal trust resources or tribal treaty rights (including water rights).

Litigation support funds may be available to tribes involved in litigation, negotiation or administrative proceedings to protect tribal trust resources or treaty rights. These funds may be used to cover costs associated with developing evidence, research services, or to procure the services of expert witnesses to support the tribe's position. They may not be used to pay for legal services or to sue the Federal Government or to cover costs associated with water issues, funds for which are available instead from the BIA Water Rights Negotiation/Litigation Program.

To request attorney's fee or litigation support funds, a tribe must submit an application to the Agency Superintendent and Area Director for submission to the Office of Trust Services by [DATE] of each fiscal year. Separate applications should be submitted for each request and for each matter.

25 CFR PART 89 APPLICATION REQUIREMENTS

A. Information to be included in <u>all</u> applications:
1. Identify whether the application is for attorney fee funds or litigation support funds.
2. Provide historical or other relevant/general background information regarding events leading to the current situation.
3. Provide a copy of the Tribal resolution authorizing the Tribe's request for funds.
4. A current financial statement for the Tribe sufficient to show the Tribe's capacity to pay for all or part of the legal services.
5. A statement that the tribe does not possess sufficient tribal funds or assets to pay for all or a part of the services sought.

B. Information to be included in <u>attorney fees</u> applications:
1. Identify the exception(s) under 25 CFR § 89.41 under which the application is submitted.
a. Include a description of how the request fully meets each identified exception.
2. Provide a statement of why the matter must be handled by a private attorney as opposed to attorneys from the Department of Justice or Department of Interior.
3. Provide a concise description of the issue and scope of work for which attorney fee funds are requested. Please include approximate court dates and/or time frames for negotiations, litigation, etc.
4. Provide a detailed breakdown of the services for which funds are sought, including:
a. costs of the services;
b. number of attorney hours; and
c. attorney hourly rates.
5. A copy of the relevant legal counsel contracts.
6. A certificate or statement of good standing from the bar association of each attorney for whom fees the applicant seeks funds.
C. Information to be included in <u>legal support services</u> applications:
1. Provide a detailed breakdown of the services for which funds are sought, including:
a. costs of the services;
b. number of hours; and
c. hourly rates.